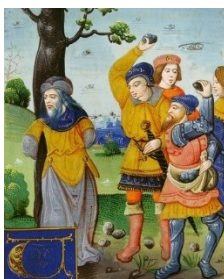


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## Mishnah with a Twist [2]

### A Student Who Instructs Others to Act is Exempt. It Follows That His Stringency is His Leniency.

Insights into Mishnah Sanhedrin 11:2



#### Background to Our Story (What you need to know to better understand the story)

##### Zaken Mamre - Rebellious Elder

Zaken Mamre (Rebellious Elder) is a scholar who disobeys a decision of the supreme court in Jerusalem. Its basis is to be found in the Bible (Deuteronomy. 17:8–12).

##### Deuteronomy 17:8–13

<sup>8</sup> If cases come before your courts that are too difficult for you to judge—whether bloodshed, lawsuits or assaults—take them to the place the Lord your God will choose. <sup>9</sup> Go to the Levitical priests and to the judge who is in office at that time. Inquire of them and they will give you the verdict. <sup>10</sup> You must act according to the decisions they give you at the place the Lord will choose. Be careful to do everything they instruct you to do. <sup>11</sup> Act according to whatever they teach you and the decisions they give you. Do not turn aside from what they tell you, to the right or to the left. <sup>12</sup> Anyone who shows contempt for the judge or for the priest who stands ministering there to the Lord your God is to be put to death. You must purge the evil from Israel. <sup>13</sup> All the people will hear and be afraid, and will not be contemptuous again.

##### The Jewish Court System

By Yehuda Shurpin



The Sanhedrin was the Second-Temple-era name of the central Jewish court, made up of 71 members, centered in Jerusalem. In addition, there were lesser courts, both in Jerusalem and throughout the Land of Israel.

##### Supreme Court: The Great Sanhedrin of 71 Members

The Jewish supreme court was called the Sanhedrin (“Council”) or Sanhedrin ha-Gadol (“the Great Council”) and consisted of 71 rabbis.

Why 71? God told Moses, “Gather for Me 70 men from the elders of Israel.” Moses presided over them, as the verse continues, “And they shall stand there with you.” Thus, the 70 judges plus Moses equals 71.

Once Moses passed away, the judge with the greatest knowledge was appointed in his stead. Called the *nasi*, he would sit at the head of the court. To his right sat the *av bet din* (patron of the court), the second greatest judge, who was appointed as the *nasi's* assistant. The remaining 69 would sit before them, arranged according to age and stature. The wiser the judge, the closer he would be seated to the *nasi*.

The Sanhedrin was always located close to the Tabernacle or the Temple. In Moses' time it was near the entrance to the Tabernacle; in later times it was seated in a special chamber in the Temple compound. Toward the end of the Second Temple era, it convened in other locations in the Holy Land and continued to function in an ever-decreasing capacity until approximately the 5th century.

Any laws and *takanot* (decrees) issued by the Sanhedrin were binding on the entire Jewish nation. Although lower courts consisting of 23 judges could try capital cases, only the Sanhedrin had authority over cases involving the king, capital crimes committed by the high priest, or crimes committed by an entire tribe or city.

Powers exclusive to the high court also included:

Crowning a king.

Authorizing "voluntary" wars, such as wars for the sake of expanding the country's borders.

Expanding holy sites, such as Jerusalem and the courtyard of the Holy Temple.

Appointing lesser courts of 23 judges.

Additionally, since the Sanhedrin was required to hear all testimony directly, rather than through an interpreter, it was preferable that its members be familiar with every language spoken by Jews around the world. When a foreign language was used in testimony, the Sanhedrin had to have at least two members who spoke that language to examine the witnesses, and a third member who at least understood the language.

Unlike modern-day supreme courts, the Sanhedrin was not an "appeals court" in the sense that a litigant could appeal a verdict. However, if a lower court was unsure of how to rule, it could refer the case to a higher court.

### **Lesser Sanhedrin: 23 Members**

There were also lesser *sanhedrins* that consisted of 23 judges, the minimum number of judges required to try capital cases. (Interestingly, even the case of an animal that was liable to be put to death had to be judged by such a court, unless of course there was immediate danger.)

In addition to the two lesser *sanhedrins* located at the entrances to the Temple courtyard and the Temple Mount respectively, every sizeable city, as well as every tribe, had its own lesser *sanhedrin*.

### **Standard Rabbinical Court: Three Judges**

An ordinary tribunal consisted of three judges and had the power to adjudicate monetary issues as well as cases involving corporal punishments. They could not, however, judge any case that could even potentially evolve into a case of capital punishment.

## **The Text: Mishnah Sanhedrin 11:2**

זָקֵן מִמָּרָא עַל פִּי בֵּית דִּין, שְׁנַאֲמַר (שם יז) כִּי יִפְּלֵא מִמֶּךָ דְבָר לְמִשְׁפָּט וְגו'. שְׁלֹשָׁה בְּתֵי דִינָיו הֵיוּ שָׁם, אֶחָד יוֹשֵׁב עַל פֶּתַח הַר הַבַּיִת, וְאֶחָד יוֹשֵׁב עַל פֶּתַח הָעֵזְרָה, וְאֶחָד יוֹשֵׁב בְּלִשְׁכַּת הַגְּזִית. בְּאִים לְזֶה שְׁעַל פֶּתַח הַר הַבַּיִת, וְאוֹמֵר, כֹּה דִרְשָׁתִי וְכֹה דִרְשׁוּ חֲבֵרֵי, כֹּה לְמִדְתִּי וְכֹה לְמִדּוֹ חֲבֵרֵי. אִם שָׁמְעוּ, אוֹמְרִים לָהֶם. וְאִם לֹא, בְּאִין לָהֶם לְאוֹתָן שְׁעַל פֶּתַח הָעֵזְרָה, וְאוֹמֵר, כֹּה דִרְשָׁתִי וְכֹה דִרְשׁוּ חֲבֵרֵי, כֹּה לְמִדְתִּי וְכֹה לְמִדּוֹ חֲבֵרֵי. אִם שָׁמְעוּ, אוֹמְרִים לָהֶם. וְאִם לֹא, אֵלּוֹ וְאֵלּוֹ בְּאִים לְבֵית דִּין הַגְּדוֹל שְׁבִלְשִׁשָׁת הַגְּזִית, שְׁמִמְגוֹ יוֹצֵאת תּוֹרָה לְכָל יִשְׂרָאֵל, שְׁנַאֲמַר (שם) מִן הַמְּקוֹם הַהוּא אֲשֶׁר יִבְחַר ה'. חֲזַר לְעִירוֹ וְשָׁנָה וְלִמַּד כְּדָרְךָ

שְׁהִיָּה לְמַד, פְּטוּר. וְאִם הוֹרָה לַעֲשׂוֹת, חֵיב, שְׁנֹאֲמַר (שם) וְהָאִישׁ אֲשֶׁר יַעֲשֶׂה בְּזִדּוֹן, אֵינוֹ חֵיב עַד שְׂיֹרָה לַעֲשׂוֹת. תְּלַמִּיד שֶׁהוֹרָה לַעֲשׂוֹת, פְּטוּר, גִּמְצָא חֶמְרוֹ קָלוּ:

A rebellious elder according to the court, who does not observe the ruling of the court, is executed by strangulation, as it is stated: "If there shall be a matter too hard for you in judgment...and you shall arise and ascend unto the place that the Lord your God shall choose... and you shall do according to the matter that they shall declare unto you... and the man that shall do so intentionally, not to listen... and that man shall die"(Deuteronomy 17:8–12).

There were three courts there in Jerusalem. One convenes at the entrance to the Temple Mount, and one convenes at the entrance to the Temple courtyard, and one convenes in the Chamber of Hewn Stone.

An elder who issues a ruling contrary to the ruling of his colleagues and his colleagues come to that court that is at the entrance to the Temple Mount, and the elder says: This is what I interpreted and that is what my colleagues interpreted; this is what I taught and that is what my colleagues taught. If the members of the court heard a clear halakhic ruling in that case, the court says it to them.

And if not, they come to those judges who are convened at the entrance to the Temple courtyard, which is a more significant tribunal. And the elder says: This is what I interpreted and that is what my colleagues interpreted; this is what I taught and that is what my colleagues taught. If the members of the court heard a clear halakhic ruling in that case, the court says it to them.

And if not, these judges and those judges come to the High Court, the Sanhedrin of seventy-one judges that is in the Chamber of Hewn Stone, from which Torah emerges to the entire Jewish people, as it is stated: "And you shall do according to the matter that they shall declare unto you from that place that the Lord shall choose and you shall observe to perform according to all that they shall teach you" (Deuteronomy 17:10). They are the ultimate arbiters who establish the *halakha* that is binding. If they ruled contrary to the ruling of the elder and the elder then returned to his city, and nevertheless, he taught in the manner that he was teaching previously, he is exempt from punishment. But if he instructed others to act on the basis of his ruling that stands contrary to the ruling of the Sanhedrin, he is liable to be executed, as it is stated: "And the man that shall do so intentionally not to listen" (Deuteronomy 17:12), meaning that one is not liable unless he instructs others to act.

A student who is not yet an elder, i.e., he has not been ordained, who instructs others to act contrary to the ruling of the Sanhedrin, is exempt, as a ruling given prior to ordination is not a valid ruling. It follows that his stringency is his leniency. The stringency imposed upon the student that he is not sanctioned to issue rulings results in the leniency that if he instructs others to act on the basis of his ruling that is contrary to the ruling of the Sanhedrin, he is exempt.



**Explaining the Story** - What is going on in our story? (Explain the sequence of events)

### **Comprehension and Analysis Questions**

**Bonus ?** *Anyone who shows contempt for the judge or for the priest who stands ministering there to the Lord your God is to be put to death (Deuteronomy 17:12).* Why do you think the Torah is so harsh with the *Zaken Mamre* (the Rebellious Elder)?

**Bonus ?** Why is a student exempt from the death penalty if he instructs others to act contrary to the ruling of the Sanhedrin?

### **“The Twist” – Or the Lessons We Can Learn from This Text.**

! The bigger your influence, the bigger your power, the bigger the potential for harm if that power is misused.



The case of the *Zaken Mamre* (the Rebellious Elder) must be understood in the context of a society that is trying to maintain the rule of law and this rule of law is being challenged by a respected member of the system who holds enormous authority.

In the words of Adam Kirsch: "...his [the Rebellious Elder's] transgression has to do with stubborn arrogance in the face of authority—the kind of sin that would be especially tempting to a great Torah scholar, who is used to being treated worshipfully. For the rabbis, this served as a basis for the principle that no Torah scholar can set himself up as an independent authority, in defiance of the rabbinical consensus."

The Torah is warning us of the danger posed by people of great influence, who wish to put themselves above the rule of law.